



EQUALITY IMPACT ASSESSMENT

SUMMARY

Title of policy, project or function:

Procedure for consideration of exclusion of solicitor or advocate under Section 31 of the Legal Aid (Scotland) Act 1986

Is the policy, project or function new (proposed) or already exists?

No

Has a screening exercise been carried out before this full assessment?

New

Key findings from the assessment:

This policy will introduce an effective and efficient, robust and transparent process to enable the Board to consider whether it is appropriate and proportionate to exclude a solicitor or advocate from proving legal assistance. This policy will have no impact on any of the equality groups.

Actions as a result of the assessment:

No further action required

Date impact assessment published:

12/12/2013

Lead official(s) responsible for assessment:

Brian Millar, Manager Compliance & Solicitor Investigations

Department:

Policy & Planning

Name of sponsor/ Director who has signed off that the policy/ function has been sufficiently assessed against the needs of the equality duty:

Colin Lancaster, Director of Policy & Planning

Date of sign off:

9 September 2013



Step 1 - Examine the information available to assess likely impact of the function/ policy on different equality groups

1.1 Describe the policy, project or function. What does it aim to do? What and who will it affect? *You can update or use information from your screening assessment if one was completed.*

Where the Board determines that the conduct of a solicitor or advocate in relation to legal aid work or his or her professional conduct generally present good reason to exclude them from providing legal assistance, the Board may invoke its powers under section 31(3) of the Legal Aid (Scotland) Act 1986.

Prior to 1st May 2011, the statutory power to exclude solicitors or advocates in terms of Section 31 rested with the Law Society of Scotland and the Faculty of Advocates. Since that date, by virtue of the Legal Services (Scotland) Act 2010, Section 140, the responsibility for excluding a solicitor or counsel from giving legal assistance has been transferred to the Board.

The proposed procedure for exclusion of a solicitor or advocate by the Board will cover all solicitors and advocates who undertake any form of legal assistance whether criminal, civil or children's.

1.2 What is known about each of the equality groups who might use or be affected by this policy? For evidence see [Scottish Government equality finder](#) (contains information on equality groups and the justice system), the [SLAB shared drive](#) - information on the different groups (contains other information on equality groups) and [SLAB's research webpage](#) for information on the demographics of applicants of legal aid and solicitors providing work under legal aid.

You need to look at the evidence you have for each group - Race, Sex (gender), Gender Reassignment, Disability, Sexual Orientation, Pregnancy & Maternity, Age, Religion and Belief, and Marriage & Civil Partnership. Think about the people likely to be affected by the policy. Does the policy relate to functions that have been identified as being important to particular protected groups? Does it relate to an area where there are already known inequalities? Good evidence is required for you to show 'due regard'. An inadequate analysis in an assessment may mean failure to meet the general duty.

The Board maintains registers for both firms and solicitors who undertake criminal and children's legal assistance and a firm only register for those who undertake civil legal assistance. A solicitor and/or their firm can be on one, two or all three registers.



Presently there are 1,438 solicitors on the criminal register and 797 solicitors on the children's register. We have no separate register for solicitors who undertake civil legal assistance. However, a nationwide telephone survey of solicitors was undertaken in 2013. Of those contacted who had undertaken civil legal assistance, 377 or 23% completed the survey and in doing so also provided some demographic information

A review of the criminal and children's registers can draw on name title (Mr, Mrs, or Miss/Ms) to determine gender. The research findings can provide more detailed information, for those who answered the survey, in respect of solicitors undertaking civil legal assistance.

From the Scottish Legal Aid Board's Annual Accounts for 2012-13 the total number of advocates who were paid legal assistance was 362. According to the Faculty website there are 460 members of Faculty.

Gender

The Civil Solicitor Survey 2013 had 377 responses of which 162 (48%) were male and 175 (52%) were female. Drawing on name title the criminal register has 956 (67%) male and 482 (33%) female solicitors. For the Children's register of the 797 solicitors 424 (53%) are male and 373 (47%) are female.

Name title is not a mandatory field for recording information for Advocates within the Board's system. Consequently we do not have complete gender information for members of Faculty undertaking legal assistance. However, the title information where it has been completed shows the following.

Advocates -	gender:
Male	185
Female	60
Blank (name title not entered)	117
Total	362

Age

Criminal Register years in Practice

We have no information in respect of the age of solicitors. However as part of the project work on possible contracting for Criminal legal Assistance, the names of solicitors registered to undertake criminal legal aid work were checked against the Law



Society Website for date of admission to practice. Although this doesn't provide an age demographic of criminal solicitors it does provide some insight into how long 98% of all solicitors on the criminal register have been practising law and therefore limited assumptions can be made regarding the age profile of this group.

Years in practice	Number of solicitors
1-3	183
4-9	253
10-19	281
20-29	384
30+	259
40+	49
Total	1,409

2013 Civil Solicitor Demographic findings

The recent nationwide telephone survey of 377 civil solicitors provided the following information on this group's demographics

Age	Number
18-24	4
25-34	75
35-44	73
45-54	110
55-64	51
65 or above	7
Prefer not to say	17
Total	377

Race	Number
White	312
Asian	4
Prefer not to say	21
Total	377



Religion & Belief	Number
Church of Scotland	69
Roman Catholic	43
Other Christian	25
Hindu	1
Muslim	1
Buddhist	1
Jewish	2
None	149
Prefer not to say	46
Total	377

Sexual Orientation	Number
Heterosexual	249
Gay/Lesbian	2
Bisexual	1
Other	1
Prefer not to say	84
Total	377

Disability

Do you have a long-standing illness?

Yes	6
No	307
Prefer not to say	24
Total	337

How would you describe disability?

Hearing impairment	1
Visual impairment	2
Physical co-ordination	2
Reduced physical capacity	2



Prefer not to say	1
Total	8

The Section 31 procedure introduces an effective, robust, efficient and flexible process, a transparent procedure, including an oral hearing, for a solicitor or advocate who may be considered for exclusion from undertaking Legal Assistance. A solicitor or advocate is not a protected group and the procedure formalising a system that already exists creates no adverse bias. The procedure allows for reasonable adjustments to be made where required e.g. provision of a BSL interpreter or other provision during an oral hearing where the solicitor/advocate is deaf or hard of hearing.

The procedure is designed to ensure there are no arbitrary or discriminatory decisions made that would impact on any protected group. The steps that require to be taken, where the investigation is reported by the Director and the decision to refer is made by all Directors is separate from the committee who make the final determination to exclude. The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

The solicitor or advocate is given the opportunity to make representations both in writing and orally. Consequently the system is designed to be open and transparent, minimises any risk of discrimination. Explicit within the policy is a commitment to make any adjustment to the procedure to ensure that no protected group is affected adversely.

1.3 Are there any gaps in understanding of your policy/ function in relation to equality groups? *You should think about opportunities to fill any gaps in evidence through your consultation plans for the policy/ function at Step3.*

No



Step 2 - Impacts on priority characteristics and suggested steps to address these

Does the policy/ function have any impacts (whether intended or unintended, positive or negative) on any of the equality groups? Describe for each group the ways in which the policy, as it is planned or as it operates, might have negative and/or positive impacts. You should answer these three questions for each group:

- 1) Is there potential for discrimination?
- 2) Is there potential for developing good relations?
- 3) Is there potential to advance equality of opportunity?

Race

Is there any potential impact on this group? No

Please explain your answer:

This policy is designed to introduce and formalise a process to, in certain circumstances, preclude a solicitor or advocate from providing Legal Assistance

The procedure is designed to ensure there are no arbitrary or discriminatory decisions made that would impact on any group. The solicitor or advocate is given the opportunity to make representations both in writing and orally consequently the system is designed to be open and transparent, minimises any risk of discrimination. Explicit within the policy is a commitment to make any adjustment to the procedure to ensure that no group is affected adversely.

The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

- 1) No
- 2) N/A
- 3) N/A



Sex (gender)

Is there any potential impact on this group? No

Please explain your answer:

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This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Gender reassignment

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Disability

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

The procedure allows for reasonable adjustments to be made where required

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A



There may be circumstances, depending on the nature of the disability or impairment that certain adjustments may be necessary in respect of the format and support of the a hearing and/or the location.

Pregnancy and maternity

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Religion and belief

Is there any potential impact on this group? No

Please explain your answer:

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This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Age

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No



2) N/A

3) N/A

Marriage and civil partnership

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Sexual orientation

Is there any potential impact on this group? No

Please explain your answer:

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The separation of function between those investigation/reporting and Committee member determining sanction promotes objectivity and strives to eliminate unfairness.

This policy shows no indication of positively or negatively affecting solicitors or advocates under this protective characteristic.

1) No

2) N/A

3) N/A

Where there is potential for indirect/ direct discrimination, what can you do to reduce or eliminate this risk?

No potential for indirect or direct discrimination identified.

Do you need to make changes to your policy or function on the basis of this assessment?

No

What is the likely impact of these changes on the plans for the policy/ function? (resources, cost, timings etc.)

None



Step 3 - Consultation and stakeholder engagement

Do you/did you have any consultation/ involvement planned for the policy/ function?

No

What do you hope to achieve from your consultation/ involvement?

n/a

List the main stakeholder agencies that you intend to or have already discussed this policy with. Give details of any equality groups represented.

n/a



Step 4 - Discuss and review the assessment with decision makers and governance structures

You must discuss the results with senior decision makers before you finalise the assessment.

Give details of the governance structures you will report, or have already reported, to about this assessment. For example, but not limited to, the Project Board, Executive Team or Board members.

Executive Team and Board Members.

If you have presented the results of the assessment to the groups you have listed above please include the date you presented to each group listed.

9th September 2013

Will there be any changes made to the plans for the policy/ function or actions as a result of this assessment?

No

If yes, give details of likely changes and actions arising from this assessment.

n/a



Step 5 - Publication and review of EQIA

All assessments must be published as early as possible after the decision is made to implement a new policy or function.

Date of publication:

10/12/2013

Review date:

07/12/2015